

APPEAL NO. 010103

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 20, 2000. The hearing officer determined that the date of injury of the appellant/cross-respondent's (claimant) hearing loss injury under Section 408.007 is _____. Thus, the hearing officer concluded that the Texas Workers' Compensation Commission (Commission) does not have jurisdiction to hear this case because the date of injury was prior to January 1, 1991. Nonetheless, the hearing officer also made findings of fact concerning issues of injury, notice, and timely filing of a claim under the provisions of the 1989 Act. In his appeal, the claimant asserts error in the hearing officer's date-of-injury determination. In response to the claimant's appeal, the respondent/cross-appellant (carrier) urges affirmance. In its conditional cross-appeal, the carrier asserts error in the hearing officer's findings of fact related to the issues of injury, notice, and timely filing of a claim. The appeal file does not contain a response to the carrier's cross-appeal from the claimant.

DECISION

Affirmed in part and reversed in part.

The hearing officer did not err in determining that the claimant's date of injury, the date the employee knew or should have known that the disease may be related to employment, is _____. There was sufficient evidence to support the hearing officer's determination that the claimant, as a reasonably prudent person, should have known that his hearing loss was related to his exposure to loud noises at work as of that date, when his hearing was retested at work, after a hearing test from the previous week had revealed a hearing loss. Nothing in our review of the record reveals that the hearing officer's date-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Based on the determination that the date of injury preceded the January 1, 1991, effective date of the 1989 Act, the hearing officer properly determined that the Commission did not have jurisdiction to hear the claimant's claim. Texas Workers' Compensation Commission Appeal No. 92168, decided June 12, 1992; Texas Workers' Compensation Commission Appeal No. 93054, decided March 8, 1993.

As noted above, despite having determined that the Commission did not have jurisdiction to adjudicate the claimant's claim, the hearing officer nevertheless made findings of fact addressing issues of injury, notice, and timely filing of a claim under the 1989 Act. Once a determination is made that jurisdiction does not exist, it is error to make factual findings related to the claim. Thus, we reverse the determinations relating to injury, notice, and timely filing of a claim and render a decision that the claimant's hearing loss claim should be adjudicated under the prior workers' compensation law.

The hearing officer's determinations that the date of injury is _____, and that the Commission does not have jurisdiction over the claimant's hearing loss claim are affirmed. The determinations concerning injury, notice, and timely filing of a claim are reversed and a new decision rendered that the hearing loss claim must be determined under the prior workers' compensation law.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge